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Bankruptcy

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dollars per year, and therefore we cannot afford larger monthly numbers on our present income.

Would you like it published bi-monthly, or quarterly better? So that news and comment could appear. Press releases from the American Bar Association are generally from three pages up—would you like them published? Would you prefer the present form changed partially or wholly? Your executive committee and officers would like to know. But please remember that our annual income was less last year than the year before, and will be less this year than last, and will continue to diminish for the duration.

Let's have your comment, wishes, and suggestions.

ATTENTION

It has been suggested that our members might like to have at least the Judicial Practice Titles of our new code printed on one side only, so as to have more room for annotating the sections as decisions are handed down. The extra cost would be small if done in connection with the printing of the regular edition. Please advise Senator J. J. Kehoe, Chairman of the Interim Committee at Bismarck if you favor this.

BANKRUPTCY

Definition of Farmer Under Section 75 (r)

Whether an individual is recognized as a farmer within the meaning of section 75 (r) of the National Bankruptcy Act (52 St. 840), as amended by the Frazier-Lemke Act (49 St. at L. 943), and is eligible for agricultural compositions is a question of fact to be decided upon by a hearing and a consideration of all pertinent facts had before a judge or by reference to a master. 8 C. J. S. section 95.

Essentially the debtor qualifies as a farmer either because he is "personally, bona-fide engaged in farming operations or because the principal part of his income is derived from such operations." National Bankruptcy Act, section 75 (r). This definition is worded in the alternative and "is to be used by way of contrast." First National Bank v. Beach, 301 U. S. 435 (1937). With a few exceptions the court assumes that section 75 (r) is the controlling definition of "farmer" for the purpose of gaining special benefits offered by section 75. In re Moser, 95 F. (2d) 944 1938); In re McCoy, 17 F. Supp. 973 (1936); In re Knight, 9 F. Supp. 502 (1934). Contra: Benitz v. Bank of Nova Scotia, 109 F. (2d) 743 (1940). The second half of the above definition, "or the principal part of the debtor's income," becomes important only "when the debtor is engaged in two or more pursuits to such an extent it would be difficult to say which, if any, was the principal one." In re Pollock, 46 F. Supp.

358 (1942). A farm owner who received a share of the crops produced by the tenant amounting to approximately seven hundred dollars, had no active part in farming the land and was employed as a school teacher at a salary of from eighty to one hundred dollars a month. Held, the debtor was not a "farmer" within the meaning of the Bankruptcy Act entitled to agricultural compositions and extensions. In re McCoy, 17 F. Supp. 972 (1936); cf. In re Davis, 22 F. Supp. 12 (1938); In re Pollock, supra. Without exception courts have held that the operation of farming in actuality, must be personal in that the debtor is tilling the soil himself or through the supervision of hired laborers. "True, Congress must have intended the second part of the definition (the principal source of income) to enlarge the class over that specifically included in the first part of the definition ('personally, bona-fide engaged in farming'). But it does not follow that it intended the enlarged class to include one who is not personally engaged in farming. The principal part of the income refers to the foregoing definition of farming operations." Shyvers v. Security First Nattional Bank, 108 F. (2d) 611 (1939), certiorari denied 60 S. Ct. 608 (1940); cf. Williams vs. Great Southern Life Insurance Co. et al., 124 F. (2d) 38 (1938); In re Pollock, supra p. 358; In re Olson, 21 F. Supp. 504 (1939). As a general rule it can be stated that one who pays no expenses, takes no risks, and can suffer no losses except in the event of a total crop failure, is not primarily, personally engaged in farming, and as a result is not entitled to agricultural compositions and extensions. 8 C. J. S. section 95; cf. In re Wright's Estate, 91 F. (2d) 894 (1937). The difficulty is determining whether the farmer who makes investments in other fields of commercial endeavor is entitled to agricultural compositions and extensions is usually resolved by looking to the fact, if present, that the indebedness arose in the business of farming rather than in the collateral pursuit. Nicholson v. Williams and Shelton Co. Inc. et al., 121 F. (2d) 740, 741 (1941), affirmed 36 F. Supp. 308 (1940). A recent decision holds that the debtor must have more than a newly acquired equitable right in the farm before the debtor is recognized as a "farmer." McLean v. Federal Land Bank of Omaha, 130 F. (2d) 123 (1942).

The distinctive trend running throughout decisions in determining whether an individual engaged in two or more pursuits is a "farmer" entitled to special benefits under section 75 has been to place emphasis on the relative amount of income, derived from the farming, the permanency and reliance on farming as a means of livelihood, the pursuit in which the indebtedness arose, and whether or not there was supervision of farming operations. No separate factor is controlling, and as stated before each case is a separate and original question of fact that must be decided on its own merits.

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